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SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
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Author:	Wieckowski	**Tax Levy:**	No
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COMMUNITY DEVELOPMENT

Limits the ability of cities and counties to sell or lease property under existing economic development law.

Background

Surplus Land Act. Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. The Surplus Land Act spells out the steps local agencies must follow when they want to dispose of land they no longer need. It requires local governments to give a "first right of refusal" to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement. The statute's implicit public policy is that affordable housing is the best use for land that a public agency no longer needs.

Before local officials can dispose of property, they must declare that the land is no longer needed for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land." Agency use cannot include commercial or industrial uses or activities, and land disposed of for the purpose of generating revenue cannot be considered necessary for the agency's use. The Act designates certain types of land as "exempt surplus land," which doesn't have to meet the requirements of the Surplus Land Act. All other surplus land must follow the procedures laid out in the Act before they can be sold.

Before an agency can enter into negotiations to sell surplus land, they must send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them that land is available for the following purposes:

- Low- and moderate-income housing;
- Park and recreation, and open space;
- School facilities; or
- Infill opportunity zones or transit village plans.

Housing sponsors can notify the Department of Housing and Community Development (HCD) that they are interested in acquiring surplus land to develop affordable housing. HCD must maintain a list of notices of availability on its website.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The two entities have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they can't agree, the agency that owns the surplus land can sell the land on the private market. The Act says that nothing in its provisions prevent a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

In 2019, the Legislature substantially revised the Surplus Land Act to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the Act's requirements (AB 1486, Ting). Among other changes, AB 1486 broadened the definition of surplus land and required land to be designated as surplus prior to the local agency selling the land, which ensures that the Surplus Land Act is triggered such that a local agency must comply with it. AB 1486 also prohibited local agencies from counting the sale of land for economic development purposes as being "for the agency's use." This means that local agencies must open their properties up to affordable housing developers first, even if they have a different purpose in mind for the property. Additionally, AB 1486 instituted a requirement that if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15 percent of the units must be sold or rented at an affordable cost to lower income households. Finally, AB 1486 imposed penalties on local agencies that violate the Surplus Land Act, totaling 30 percent of the sales price of land disposed of in violation of the Act for a first violation, and 50 percent of the price of the land for subsequent violations. These penalty revenues must be deposited in a local housing trust fund.

AB 1486 also provided that its changes do not apply to property where a local agency entered into an exclusive negotiating agreement or other legally binding agreement prior to September 30, 2019, as long as the property is disposed of prior to December 31, 2022. Instead, that property must only comply with the Surplus Land Act as it read prior to the effective date of AB 1486.

Economic Opportunity Law. State law generally allows a city to dispose of real property in any way it chooses if doing so is for the common benefit. A city may sell or lease real property for less than fair market value, without violating the constitutional prohibition against making a gift of public funds, if the sale or lease serves a public purpose. State law generally requires a county to sell or lease property using a competitive sealed-bid process.

Until 2011, the Community Redevelopment Law allowed local officials to set up redevelopment agencies (RDAs), prepare and adopt redevelopment plans, and finance redevelopment activities. The Law authorized RDAs to sell or lease property without public bidding as long as the RDA provided public notice and held a public hearing. Citing a significant State General Fund deficit, Governor Brown's 2011-12 budget proposed eliminating RDAs and returning billions of dollars of property tax revenues to schools, cities, and counties to fund core services. Among the statutory changes that the Legislature adopted to implement the 2011-12 budget, AB X1 26 (Blumenfield, 2011) dissolved all RDAs. The Community Redevelopment Law specified the manner in which former redevelopment agencies could sell or lease real property. Those provisions now apply to successor agencies to redevelopment agencies. State law requires successor agencies to prepare a long-range property management plan and dispose of property under that plan.

With the dissolution of RDAs, cities lost the primary tool they had to unlock economic development within so-called "blighted areas." Following their dissolution, the Legislature enacted several measures to provide cities and counties with additional tools for economic development, including various infrastructure financing laws. The Legislature also granted new authority to cities or counties to dispose of property contained within a long-range property management plan for economic development (SB 470, Wright, 2013). Specifically, SB 470 (Wright) allowed a city or county to use alternative procedures to dispose of the property for economic development purposes, if a successor agency has transferred property to a city or county as part of a long-range property management plan. The purpose in doing so was threefold, as noted in the Wright bill's findings and declarations:

- To promote economic development on a local level so that communities can enact local strategies to increase jobs, create economic opportunity, and generate tax revenue for all levels of government;
- To give local governments tools, at no cost to the state, that allow local governments to use their funds in a manner that promotes economic opportunity; and
- To continue certain powers afforded to redevelopment agencies that were critical to economic development, yet do not have an impact on schools and the state budget.

To further enhance city and county economic development powers, AB 806 (Dodd, 2016) expanded the Economic Opportunity Law enacted by the Wright bill to:

- Include all city- or county-owned property, not just property contained in a long-range property management plan;
- Allow for the acquisition of property for economic development purposes, in addition to sales or leases;
- Generally prohibit sales or leases of property acquired through eminent domain at less than fair market value, except for specified former redevelopment properties; and
- Require local governments to publicly disclose the costs and benefits of any property acquired, sold, or leased for economic development as provided in existing law applying to economic development subsidies.

To use the law, the city council or county board of supervisors must approve the acquisition, sale, or lease of property by adopting a resolution following a public hearing, and after publishing notice in the newspaper at least once a week for two consecutive weeks. The resolution must contain a finding that the acquisition, sale, or lease will assist in the creation of "economic opportunity," defined to mean:

- Creation or retention of at least 1 job per $35,000 of public investment;
- At least a 15% increase in property taxes;
- Creation of affordable housing; or
- Certain transit-oriented development projects.

If the proposal is for a sale or lease, the resolution must find that the sale equals or exceeds the fair market value of the property or the fair reuse value based on the conditions, covenants, and development costs required by the sale or lease. The city or county must also compile a public report containing:

- A copy of the proposed acquisition, sale, or lease;

- The total cost of the agreement to the city, county, or city and county, including various transaction costs;
- For the sale or lease of property: the fair market value and the estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease, along with reasons for the difference between the two, if any; and
- An explanation of why the acquisition, sale, or lease of the property will assist in the creation of economic opportunity.

Economic Opportunity Law provides that its processes are an alternative to other authorities to acquire, sell, or lease property, but also provides that the law does not limit or in any way affect the application of any other such laws.

500 Benton Street project. The City of Santa Clara and the Valley Transportation Authority (VTA) each own parcels located at the Santa Clara Caltrain station proposed for development by Republic Metropolitan (ReMet). The proposed project would include a mixed-use, student housing/affordable workforce housing, transit-oriented development comprising two buildings, where 29% of the total units are reserved for affordable workforce housing. Specifically, the project would consist of 170 units (545 beds) of student apartment/workforce housing and 70 units of affordable housing restricted to low or very low income persons or families.

The City, VTA, and ReMet entered into an exclusive negotiating agreement in February 2018 for a long-term lease of the two parcels. The City and VTA propose to continue use of the project for purposes related to their authorities, including for operation and maintenance of a city-owned well and Caltrain parking.

ReMet is concerned that changes to the SLA enacted by AB 1486 may preclude the development of the project. The author wants to clarify that Economic Opportunity Law can be used to lease the properties at 500 Benton Street in lieu of complying with the SLA.

Proposed Law

Senate Bill 466 provides that a city or county disposing of property pursuant to Economic Opportunity Law may comply with the procedures required by that law if the property is statutorily exempt from any other property disposition procedures required by law for a city or county to dispose of property. The bill also removes the requirement that the property be city-owned.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "SB 466 would clarify existing law and restore to cities and counties, as well as developers, the confidence that they have the flexibility needed to promote economic development of publicly-owned property. This bill would ensure that the Economic Opportunity Law remains a true alternative to any other authority of a city or county to sell, lease, or otherwise dispose of land, including any other authority requiring that specific

procedures not set forth in the Economic Opportunity Law be followed prior to such disposition."

2. Turning back time. The Legislature enacted Economic Opportunity Law to give cities and counties additional avenues for economic development within their jurisdiction by allowing local governments to dispose of properties at less than fair market value, if certain public benefits could be documented. In doing so, the law recognized the important role that local officials play in attracting development for the greater good of their community. However, since AB 1486 amended the Surplus Land Act to explicitly state that disposing of property for the purpose of economic development is cannot be considered "use" by the agency, these two statutes conflict. The introduced version of SB 466 would have been consistent with the underlying principles of Economic Opportunity Law by affirmatively stating that the Law's process can be used for the sale or lease of property in lieu of complying with other processes, but would have clearly asserted Economic Opportunity Law's supremacy over the Surplus Land Act. To address concerns from affordable housing groups that the bill would undermine the recent changes to the Surplus Land Act, the author recently amended SB 466 to provide that Economic Opportunity Law can only be used for property that is exempt from other statutes governing disposal. The 500 Benton Street project may qualify for an exemption under the SLA, so this version of SB 466 may work for that specific project. However, SB 466 now firmly subordinates Economic Opportunity Law to the Surplus Land Act and removes an important small-"r" redevelopment tool for local governments to use. Given the disputes over the application of Economic Opportunity Law and that the stated need for the bill arises from a single project, the Committee may wish to consider amending SB 466 to narrow the bill to apply only to the 500 Benton Street project.

3. Clear as mud. Local governments are still grappling with the aftereffects of the passage of AB 1486. Many concerns revolve around whether leases are subject to the Surplus Land Act after AB 1486 was adopted. Specifically, committee amendments to AB 1486 in the Assembly Local Government Committee removed leases from that bill's changes to the Surplus Land Act. However, AB 1486's changes were ambiguous. Accordingly, there is some dispute as to whether leases are subject to the Surplus Land Act: local governments argue that leases aren't, while HCD published guidance on the Surplus Land Act that states that they are. The project that prompted SB 466 is caught up in this dispute: since the parcels would be leased rather than sold to ReMet, if leases aren't included in the Surplus Land Act, then the project doesn't need to follow that law. An alternative means of meeting the goal of SB 466 would be to fix the Surplus Land Act to finish the job of eliminating leases from the act altogether, thereby making clear that the 500 Benton Street project does not need to comply with it.

Support and Opposition (5/3/21)

Support: None submitted.

Opposition: None submitted

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